

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

In the matter of the petition of

Hawaiian Airlines, Inc.

for an exemption from §§ 121.314, 25.857(c),
25.858 of Title 14, Code of Federal Aviation
Regulations

Regulatory Docket No. 29941

DENIAL OF EXEMPTION

By letter of February 22, 2000, Mr. Irving Fuke, Director of Quality Control/Engineering, Hawaiian Airlines, Inc., Honolulu International Airport, P.O. Box 30008, Honolulu, Hawaii, 96820-0008, petitioned for a limited exemption from certain requirements of §§ 121.314, 25.857(c), and 25.858, of Title 14, Code of Federal Aviation Regulations (14 CFR). The proposed exemption, if granted, would permit one Model DC10-10 to operate from March 20, 2001, until May 15, 2001, without being fitted with fire suppression equipment.

The petitioner requests relief from the following regulations:

Section 121.314(c), requires that after March 19, 2001, each Class D compartment, regardless of volume, must meet the standards of §§ 25.857(c) and 25.858 of this Chapter for a Class C compartment unless the operation is an all-cargo operation in which case each Class D compartment may meet the standards in § 25.857(e) for a Class E compartment.

ANM-00-397-E

Section 25.857(c) requires that a Class C cargo or baggage compartment have a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station, an approved built-in fire extinguishing or suppression system controllable from the cockpit, means to exclude hazardous quantities of smoke, flames, or extinguishing agent, from any compartment occupied by the crew or passengers, and means to control ventilation and drafts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment.

Section 25.858 requires that cargo or baggage compartment smoke or fire detection systems must have a visual indication to the flight crew within one minute after the start of a fire, a system capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased, a means for the crew to check in flight, the functioning of each fire detector circuit, and a means for the effectiveness of the detection system to be shown for all approved operating configurations and conditions.

The petitioner's supportive information is as follows:

"Relief Requested

"Pursuant to 14 CFR §11.25, Hawaiian Airlines hereby petitions the Administrator for a limited exemption until May 15, 2001, from certain requirements of FAR § 121.314 requiring that all Class D cargo compartments meet the standards for Class C compartments, pursuant to 14 CFR §§ 25.857(c) and 25.858, by March 20, 2001, on its leased aircraft that will be returned to American Airlines (hereinafter American) on or before May 15, 2001. American will in turn be selling the aircraft to Federal Express for conversion to an all cargo configuration at which time the conversion to Class E will be accomplished for the entire aircraft.

"Explanation and Justification

"FAR § 121.314 requires that each Class D cargo compartment, regardless of volume, must, after March 19, 2001, meet the standards of 14 CFR §§25.857(c) and 25.858 for a Class C compartment unless the operation is an all-cargo operation (in which case, class D compartments are to be converted to Class E). FAR §121.314 also requires that, until such time as all Class D compartments have been converted or retrofitted with appropriate detection and suppression systems, each certificate holder must submit written progress reports to the FAA regarding the status of the upgrade process. As the aircraft in question will be going into all cargo service, after conversion for FedEx that will begin on May 15, 2001, eight weeks after the March 20, 2001 compliance date, converting the cargo hold to Class D for eight weeks and then converting to Class E is an inappropriate expenditure of funds and not necessary for the safe operation of the aircraft for the eight week period.

"Under §25.857(c), a Class C cargo or baggage compartment is one not meeting the requirements for either a Class A or Class B compartment but in which (1) there is a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineering station; (2) there is an approved built-in fire extinguishing or suppression system controllable from the cockpit; (3) there are means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers; and (4) there are means to control ventilation and drafts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment. As Class D compartments are designed to control a fire by severely restricting the supply of available oxygen through limited airflow, upgrading Class C compartments to Class D standard would require the installation of detection and suppression equipment, necessitating extensive modifications to the aircraft in question.

"As the result of the terms of the lease agreement with American Airlines, Hawaiian's DC10-10, N-160AA will be returned to American on May 15, 2001 and American has informed Hawaiian that it will then be sold to Federal Express for conversion to all cargo configuration with Class E compartments. Given the circumstances outlined above, compliance with FAR § 121.314 for an eight week period by Hawaiian is not economical for either Hawaiian, American or Federal Express.

"The cost of modifying this airplane would not yield the cost-benefit ratio yielded by other airplanes under §§ 25.857(c) and 25.858 and would be of little value to anyone, including the flying public, in paying for a Class C compartments conversion when eight weeks later it is to be converted to Class E. Indeed, there is only an eight week gap between the deadline imposed by the regulation and the anticipated retirement date of the plane.

"Hawaiian takes flight safety very seriously and has implemented the Class D conversion in all its aircraft including those that will be retired as the result of the purchase of a new fleet of B-717 aircraft. This expense to convert 15 aircraft that will be retired within one year of the conversion demonstrates Hawaiian commitment to fire safety and the FAA's regulations. Hawaiian will have spent approximately \$9.2 million to convert its entire DC-9 fleet which, as set forth above, will be retired within one year's time. Hawaiian has instituted several initiatives to enhance the safety of Class C compartments, system wide and for all its aircraft, which will provide an equivalent level of safety for this one aircraft. Measures include HAZMAT awareness training for all maintenance personnel, the purchase of special shipping containers for the transport of dangerous goods, and special packing/shipping training for stores personnel. Hawaiian also continues its established program of maintaining cargo compartment liners to ensure peak condition and security. The limited applicability, scope, and duration of the exemption make it unlikely that granting it would preclude any positive contribution to the overall level of

safe operations that might be made by upgrading Class D cargo compartments to Class C status.

"Hawaiian requests a prompt response so that it may have guidance regarding whether or not that aircraft will need to be fitted with new fire suppression equipment. For these reasons, Hawaiian respectfully requests, in accordance with 14 CFR § 11.27(j)(3), that a finding of good cause be made for granting the requested exemption, and that a waiver of the 120-day advance filing requirement of § 11.25(b)(1) also be granted."

A summary of the petition was published in the Federal Register on May 10, 2000 (65 FR 30185). No comments were received.

The Federal Aviation Administration's analysis/summary is as follows:

Background.

The FAA published a Notice of Proposed Rulemaking No. 97-10 (62 FR 32412, June 13, 1997) inviting public comments. More than 100 commenters responded; they included individuals, operators and manufacturers of affected airplanes, foreign airworthiness authorities, labor organizations, organizations representing aircraft manufacturers and operators, and the National Transportation Safety Board. The FAA received recommendations for both shortening and extending the three-year compliance period proposed in Notice 97-10. The FAA acknowledged that the three-year compliance period would be aggressive and would require careful planning; however, none of the commenters provided credible reasons suggesting that detection and suppression systems cannot be installed in all affected airplanes within three years while the airplanes are undergoing other scheduled maintenance.

Based on information received in the comments, the FAA concluded that a three-year compliance schedule was the optimal compromise between cost and safety considerations and that the benefits of the rule justify the costs. A three year compliance period was, therefore, adopted in the Final Rule, "Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes" (63 FR 8032, February 17, 1998).

Analysis.

According to 14 CFR 11.27(e), to grant an exemption, the FAA must find that the petition is in the public interest. In support of its petition, the petitioner provided information indicating that the exemption would be in its financial interest in that the exemption would allow the petitioner to avoid the expense of compliance. However, the petitioner's private financial interests do not necessarily equate to the "public interest."

On the contrary, in issuing the cargo compartment final rule, the FAA determined that the 3-year compliance time is in the public interest for all affected operators and all affected airplanes. Specifically, the FAA considers that establishing a generally applicable deadline for all operators creates a “level playing field” on which all operators are treated equally and fairly. Granting this petition would create just the sort of unequal treatment that the generally applicable deadline was intended to prevent.

The petitioner, like all other affected operators, has had over two years since adoption of the final rule to plan for the most efficient means to comply with the requirements. Data supplied by operators to the FAA show that over 170 airplanes are to be retired from service by the compliance deadline of March 19, 2001. Granting this exemption would allow different compliance times for different operators and would very likely set off a series of requests by other operators to obtain similar exemptions, causing confusion, uncertainty, and inconsistent results. Granting the exemption could also result in actually delaying compliance with the requirements by operators who might postpone previously scheduled work in order to pursue their own possible exemptions.

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator (14 CFR § 11.53), the petition of Hawaiian Airlines for an exemption from 14 CFR §§ 25.857(c), 25.858, and 121.314(c) for a time extension from March 20, 2001, until May 15, 2001, for one Model DC10-10 airplane is hereby denied.

Issued in Renton, Washington, on July 25, 2000.

/s/ Vi L. Lipski
Vi L. Lipski
Acting Manager
Transport Airplane Directorate
Aircraft Certification Service, ANM-100